

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/10/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000358

FILED: _____

STATE OF ARIZONA

DIANA C HINZ

v.

JARED ESTEVEN PADILLA

NEAL W BASSETT

PHX MUNICIPAL CT
REMAND DESK CR-CCC

RULING
AFFIRM/REMAND

PHOENIX CITY COURT

Cit. Nos. 5980983; 5980984

Charge:

1. OPERATION OF AN UNDAFE COMMERCIAL VEHICLE
2. FAILED TO OBEY LOCAL LAW ARS 49-502, NO TARP AS REQUIRED BY MARICOPA COUNTY AIR POLLUTION RULE 310
3. NO DOCUMENTATION OF ANNUAL PERIODIC INSPECTION WITH VEHICLE
4. NO VEHICLE MARKINGS
5. NO MEDICAL CERTIFICATE

1. GROSS VEHICLE WEIGHT IN EXCESS OF FEES PAID (LEGAL 0 ACTUAL 66300 LBS OVER 66300 LBS)
2. POSSESSION OF ALTERED DRIVERS LICENSE
3. NO CDL FOR ARIZONA
4. NO CURRENT REGISTRATION
5. IMPROPER REAR SPLASH GUARDS

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DOB: 10-13-1980

DOC: 04-10-2001

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on September 13, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Local Rules of Practice. The Court has considered the record of the proceedings from the Phoenix City Court and the memoranda submitted by counsel.

Appellant was stopped April 10, 2001, and issued numerous civil traffic and criminal traffic citations. Appellant was found guilty and responsible after a trial to the bench and filed a timely Notice of Appeal. The only charges at issue in this appeal involve a violation of A.R.S. Section 28-3478.1, Unlawful/Fraudulent Use of Driver's License, a class 2 misdemeanor offense; A.R.S. Section 28-5204, No Vehicle Markings, a civil traffic violation; and A.R.S. Section 28-5437, Gross Vehicle Weight in Excess of Fees Paid, a civil traffic violation.

Appellant first claims that the trial judge erred in failing to obtain a waiver of jury trial prior to the bench trial for the charges of Unlawful/Fraudulent Use of a Driver's License and the overweight truck charge. Unfortunately, Appellant never requested a jury trial. Appellant's failure to make a timely request for a jury trial waives the right to a jury trial.¹

¹ See A.R.S. Section 22-320(A); State v. Harrison, 164 Ariz. 316, 792 P.2d 779 (App. 1990), cert. denied, 498 U.S. 1093, 111 S.Ct. 979, 112 L.Ed.2d 1064 (1991).

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Appellant argues that the trial court had a duty to inform him of a right to a jury trial. This Court rejects Appellant's claim, finding that Appellant had no right to a jury trial on the charges of Possessing or Unlawful Use of an Altered Driver's License and the overweight truck charge.

The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right to a jury trial.² Arizona has, in fact, extended the right of a jury trial much further than guaranteed by the United States Constitution.³ The Arizona Supreme Court in McDougall⁴ listed four factors to evaluate in determining the right to a jury trial in the State of Arizona. The first three factors are found in Rothweiler v Superior Court:⁵

1. The length of possible incarceration;
2. The moral quality of the act charged (sometimes referred to as the "moral turpitude" issue);
3. Its relationship to common law crimes.

The fourth consideration comes from State ex rel. Dean v Dolny,⁶ and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

The maximum length of possible incarceration for Possession of an Altered/Fraudulent Driver's License is six (6) months in jail. The possible incarceration alone will not entitle Appellant to a jury trial as individuals charged for class 1

² Lewis v United States, 518 U.S. 322, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); Blanton v North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989).

³ State ex rel. McDougall v Strohson, 190 Ariz. 120, 945 P.2d 1251 (1997).

⁴ Id.

⁵ 100 Ariz. 37, 410 P.2d 479 (1996).

⁶ 161 Ariz. 297, 778 P.2d 1193 (1989)

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misdemeanors such as assault or disorderly conduct are not entitled to trials by jury.⁷

An evaluation of the moral quality of the act charged requires this Court to consider those facts which established Appellant's conviction. Appellant possessed a driver's license that someone (not necessarily Appellant) had altered. Appellant was not accused of making the fraudulent alteration. For those reasons, this Court concludes the crime is not of such a moral quality that a jury trial would be required. This Court also concludes that the crime of overweight vehicle, a civil traffic violation, contains no moral connotations which would entitle Appellant to a jury trial.

In considering the relationship of the crimes, Overweight Vehicle and Possession of an Altered Driver's License to common law crimes, it is clear that there is no common law antecedents to these charges.

Finally, this Court concludes that there are no sufficiently grave collateral consequences resulting from convictions for Overweight Vehicle and Possession of an Altered Driver's License that would entitle Appellant to a jury trial. Granted, the civil sanction for an overweight vehicle is serious, but that factor alone does not entitle Appellant to a jury trial.

Finally, Appellant challenges the sufficiency of the evidence (Appellant claims an absence of any evidence) to warrant his conviction of a violation of A.R.S. Section 28-5204, No Vehicle Markings, a civil traffic violation. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.⁸ All evidence will be

⁷ Goldman v. Kautz, 111 Ariz. 431, 531 P.2d 1138 (1975); O'Neill v. Mangum, 103 Ariz. 484, 445 P.2d 843 (1968).

⁸ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83

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viewed in a light most favorable to sustaining a conviction and all reasonable inference will be resolved against the Defendant.⁹ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.¹⁰ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.¹¹ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.¹² The Arizona Supreme Court has explained in State v. Tison¹³ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.¹⁴

L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁹ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

¹⁰ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

¹¹ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P.490 (1889).

¹² Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

¹³ SUPRA.

¹⁴ Id. at 553, 633 P.2d at 362.

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This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS THEREFORE ORDERED affirming the judgments of guilt, findings of responsibility, sentences and sanctions imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for future proceedings.